STATE OF MICHIGAN

COURT OF APPEALS

LETICIA N. H. LYDE, Plaintiff-Appellee,	UNPUBLISHED March 17, 2011
v	No. 294607 Wayne Circuit Court
AVERY D. LYDE, Defendant-Appellant.	LC No. 08-110807-DM

Before: SHAPIRO, P.J., and HOEKSTRA and TALBOT, JJ.

PER CURIAM.

Avery D. Lyde appeals by delayed leave granted the entry of a divorce judgment. Lyde contends that the judgment must be set aside because he did not receive proper notice of the hearing at which the judgment was entered in violation of his right to due process. We affirm.

"[A]n issue not raised before and considered by the trial court is generally not preserved for appellate review."[1] Lyde did not preserve this issue by filing a motion to vacate or set aside the divorce judgment in the trial court. Although "this Court may review an unpreserved issue if it is one of law and the facts necessary for resolution of the issue have been presented,"[2] Lyde relies on documents and affidavits that are not part of the lower court record. As previously explained by this Court:

> MCR 7.210(A) provides that appeals to this Court are heard on the original record and that the record consists of original papers filed in the lower court or a certified copy, the transcript of any testimony or other proceedings and the exhibits introduced. This Court's review is limited to the record developed by the trial court and we will not consider references to facts outside the record.[3]

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[1] *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992).

[2] *McNeil v Charlevoix Co*, 484 Mich 69, 81 n 8; 772 NW2d 18 (2009) (citation omitted).

[3] *Wiand v Wiand*, 178 Mich App 137, 143; 443 NW2d 464 (1989) (citation omitted).

Even if this Court were to disregard Lyde's failure to preserve this issue by raising it below and overlook his dependence on facts that are not part of the record, we would find no basis for granting the relief requested.

"Generally, due process in civil cases requires notice of the nature of the proceeding."[4] The notice must "be reasonably calculated under the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[5] Although actual notice is not required,[6] if a party receives actual notice, the "[f]undamental requirements of due process are satisfied[.]" [7]

Lyde's contention that he was deprived of due process is premised on his assertion that he did not receive actual notice of the October 20, 2008, hearing when the divorce judgment was entered. Lyde does not contend that notice of the hearing was not served in conformity with the court rules. In fact, Lyde acknowledges in his appellate brief that he and his attorney were aware of the hearing. He only argues that the amount of time was inadequate to enable him to appear or hire a Michigan attorney. Yet, despite his assertion of time constraints, there is no indication that Lyde requested an adjournment of the hearing. The record further demonstrates that Lyde was personally served with a copy of the complaint and summons in May 2008, and there is no dispute that his wife's application for entry of a default, supporting affidavit, and entry of default were mailed to Lyde and his counsel. Lyde clearly received notice of the pending action and the possible entry of a default judgment, but failed to file an appearance or retain counsel in Michigan. His contention that his purported late receipt of actual notice of the hearing was the reason he did not file an appearance or hire an attorney rings hollow when he had failed to take any action for months after learning of the pending action. Because Lyde has not established a due process violation he is not entitled to relief from the divorce judgment.

Lyde briefly references the trial court's refusal to consider the objection to jurisdiction filed by his South Carolina attorney before the hearing, but does not develop any argument on this point or explain why it was improper for the trial court to refuse to consider the substance of the objection because Lyde's attorney was not licensed to practice law in this state. Lyde also fails to address the merits of the objection. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority

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[4] *Vicencio v Jaime Ramirez, MD, PC*, 211 Mich App 501, 504; 536 NW2d 280 (1995).

[5] *Id.*

[6] *In re Petition by Wayne Co Treasurer*, 478 Mich 1, 9; 732 NW2d 458 (2007).

[7] *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 356 n 12; 745 NW2d 137 (2007).

either to sustain or reject his position.'"[8] Accordingly, this issue is not properly before this Court and we decline to consider it further.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Michael J. Talbot

[8] *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).